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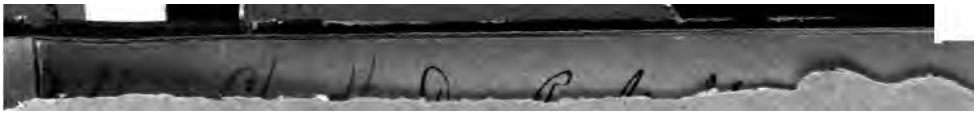

Dr R. M. Hodges
with best regards of C. R.
P24

log
1885

Massachusetts Historical Society.

MEMOIR

OF THE

HON. BENJAMIN ROBBINS CURTIS, LL.D.

BY

REV. CHANDLER ROBBINS, D.D.

Yours truly
B. R. Curtis.

J. H. Daniels Pr

MEMOIR

OF THE

HON. BENJAMIN ROBBINS CURTIS, LL.D.

PREPARED AGREEABLY TO A RESOLUTION

OF THE

MASSACHUSETTS HISTORICAL SOCIETY:

BY

REV. CHANDLER ROBBINS, D.D.

BOSTON:
PRESS OF JOHN WILSON AND SON.
1878.

MEMOIR

OF THE

HON. BENJAMIN ROBBINS CURTIS, LL.D.

BENJAMIN ROBBINS CURTIS was born in Watertown, Massachusetts, on the fourth day of November, 1809. His father was Captain Benjamin Curtis, master of a vessel trading between Boston and Valparaiso, who was half-brother to the late George Ticknor. His grandfather on his father's side was Dr. Benjamin Curtis, who graduated from Harvard College in 1771. His mother was Lois Robbins, of Watertown, who has been justly described as a lady of "great intelligence and the highest womanly virtues."

The early life of eminent men does not always give promise of future greatness. The general rule expressed in the familiar line of Wordsworth, which has passed into a proverb, "The child is father of the man," does not apply to every case. There are men who have filled the highest stations in Church and State, who have risen to distinction in every liberal profession, and in every honorable calling, whose character in boyhood and youth excited rather solicitude than high expectation. There have been others who have held the highest rank, and borne off all the honors in school and college, who seem to have culminated at the close of their academic course. But in the case of Mr. Curtis, the man was clearly prefigured in the boy. That which he became at maturity was but a realization of his youthful ideal. There never was a man whose steps from boyhood to manhood were more

directly and steadily upward. His whole course was steered by the "star of his early aspirations."

When he was about seven years old, he was sent to the school of Mr. Samuel Worcester at Newton, and subsequently to that of Mr. Angier at Medford, where he remained until he entered Harvard College in 1825.

His course as an undergraduate was distinguished, from beginning to end, for such traits as secured the respect of both his instructors and classmates, and gave promise of a useful and honorable life. The early associates who survive him remember to have noticed, even at that time, a peculiar upwardness, which seemed to be natural, and which marked him as one born to excel. Of a clear mind and good heart, of an independent spirit and resolute will; ambitious without envy or rivalry; cheerful without frivolity; self-respecting without conceit or vanity; of high aims and pure habits, he walked forward with a manly step, brushing aside the temptations which beset the path of a young collegian. As a scholar, he held a high rank; and, as a writer and speaker, he had no superior in the class. In his Junior year, he received a Bowdoin prize for an essay on the question "How far can Absolute Governments depend upon the Ignorance of the People?" About a year after his graduation, he obtained another Bowdoin prize for a dissertation, entitled "The Present Character of the Inhabitants of New England as resulting from the Civil, Literary, and Religious Institutions of the First Settlers." His reading was select and thorough rather than extensive. He made himself familiar with the best books, and was deeply interested in the discussion of the highest subjects. The same force of reasoning for which he was afterwards distinguished was noticeable in his forensic exercises.

Sterling common sense, soundness of judgment, self-possession, and maturity of thought and character were among his most prominent traits. With nothing of what is termed self-consciousness, without being timidly cautious or scrupulously watchful of himself, he was never taken off his guard. An instinctive sense of propriety regulated his conduct and

speech, and a natural clearness and steadiness of mind was an habitual defence against grave mistakes and sudden falls. He had, even at that early age, the air of stateliness and reserve, which has often given the impression of a cold and haughty nature. But those who knew him best ever found, beneath, a warm and generous heart, habitually kind in its judgments and considerate of the feelings of others.

A single incident, related by the classmate who has reason to remember it well, will serve to show his influence with the Faculty, and bring into view some of the fine qualities of his nature: —

"At the close of our college life, the whole class was one morning at a recitation before Dr. Hedge. It was at the last part of the last term. Just as the exercise was closing, the old Doctor took occasion to say that I had been guilty of very unscholarly behavior. There had been some disturbance near me, but in truth I had nothing to do with it, and got up and told him so. With a good deal of emphasis, the Doctor brought his fist to his desk, and repeated his charge, adding that I might as well try to convince him I was not in the room as that he was mistaken. With some disrespectful rejoinder, I left the room, without waiting for the dismissal of the class. I did not get to the foot of the stairs before I was satisfied of my mistake; and as the class came down, and several of them expressed approval of what I had done as just right, I was quite sure it was all just wrong. I noticed Curtis was not among them. Some days after I went to the Doctor's study, to set the matter right with him, if I could. He accepted my apology very pleasantly, and told me that Curtis acted the part of a good friend to me; that he had remained on the day of the occurrence after the class left, and very kindly bespoken for me a further consideration of the matter before it was reported to the Faculty; that he had, in consequence, never reported it. No one else in the boyish crowd had any such thoughtfulness as this."

After having graduated in 1829, he entered the Law School at Cambridge in September of that year, receiving at the same time an appointment to the office of Proctor in the University. In the School, his superior abilities were soon recognized by the professors and his fellow-students, who even then prophesied of the high career which was before

him. I remember to have heard Judge Story, then the Dane Professor of Law, remark that he should like to live long enough to see to what distinction three of his pupils would attain. One of these was Mr. Curtis, another Mr. Sumner; the third was a man who, by the force of adverse circumstances, was early turned aside from the course of life for which he had been preparing.

In 1831, he left the Law School, and entered the office of John Nevers at Northfield, with the intention of making that place his permanent residence. In April, 1832, he returned to Cambridge to pass a few months at the Law School, especially for the purpose of attending the lectures of Judge Story; and, in the autumn of that year, he was admitted as Attorney of the Common Pleas in Franklin County, and immediately established himself in Northfield. In October, 1834, he removed to Boston, formed a connection in professional business with Charles P. Curtis, Esq., and was admitted a member of the Suffolk bar. He soon acquired a large practice, and within a few years took a high rank among the most distinguished members of the profession. In February, 1846, his election by the Corporation as a Fellow of Harvard University was unanimously confirmed by the Board of Overseers.* He was a member of the House of Representatives of Massachusetts for the political year of 1851.

In the autumn of 1851, Mr. Curtis was commissioned by President Fillmore one of the Associate Justices of the Supreme Court of the United States, and took the official oath, administered by District Judge Sprague, Friday, October 10th of that year. The appointment to this high office was made by the advice of Mr. Webster, who in making this selection passed by several eminent lawyers, who had claims to his consideration, not only for their professional character, but also on the ground of personal friendship; among whom was one of the ablest and most brilliant members of the bar of

* For some of the data in this Memoir I am indebted to our Class Records, admirably kept by the Class Secretary, Rev. Samuel May.

his own State, with whom he had always been on terms of the closest intimacy. But Mr. Webster acted only for the best good of the country. He was influenced in his choice by his knowledge of the learning and abilities of Mr. Curtis, and of the peculiarly judicial traits of his mind and character, in combination with his robust physical health and comparative youth, which gave promise of a long period of service.

In 1857, Mr. Curtis decided to resign his office of Associate Judge of the Supreme Court of the United States. His letter of resignation to President Buchanan is brief and explicit.

The announcement of his purpose to resign was received with surprise and regret in all parts of the country, both North and South. Those who had most at heart the integrity and honor of the Supreme Tribunal, and who were most concerned for the security of our free institutions, regarded his retirement as a public calamity. Expressions of censure mingled with those of regret in private conversation and the public press; and even those who had entire confidence in the purity of his motives and the validity of his reasons found it difficult heartily to approve his course, on account of their deep sense of the loss of his services to the country. At the earliest moment after his determination was made, and before it became public, he addressed letters to the Chief Justice and all the associate judges of the Supreme Court, and to a few friends whose opinion he most highly valued, informing them of the step he was about to take, and briefly explaining his reasons. The following extract from one of these letters gives the substance of them all: —

"SEPT. 14, 1857.

. . . "If I had consulted only my own wishes, I should probably have retained the place. If I had added to these the implied obligation (the force of which I feel) to retain permanently an office whose tenure has been made permanent for wise reasons, I certainly should not have resigned it, save from considerations which seemed to me imperative.

"The salary attached to the office is utterly inadequate to afford a comfortable home for my family at Washington, while in attendance on

the Court there, and to pay my other necessary expenses. There has not been one year since I was in office that I have not expended my entire private income, and some years I have exceeded it; and certainly you will agree that I have not lived extravagantly at Washington. Indeed, I have lived in such a way as neither my family or myself have ever been accustomed to, and, I must be allowed to think, in such a way as is not consistent with the dignity of the office I have held."

To President Fillmore, who had appointed him to the office, he expressed himself more fully and freely, touching with caution and delicacy upon a point to which, for obvious reasons, he had refrained from referring in his correspondence with most of the others: —

Hon. Millard Fillmore. Boston, Sept. 1, 1857.

Dear Sir, — Having received from you, as the President of the United States, the appointment to the office of Associate Justice of the Supreme Court of the United States, and having come to the conclusion to resign that office, it seems to me proper that I should state to you why I have done so.

The greatly increased expenses of living have rendered the salary attached to the office inadequate to provide a suitable home for my large family in Washington while attending the court there, and to pay my other necessary expenses. I am obliged to expend, in addition to my salary, my entire private income. By leaving my family at my place in the country throughout the year, I might be able to live on the salary, though this is not certain; but it does not consist with my views of my imperative duties to them to pass eight months of the year away from those whom the providence of God has placed nearest to me, and subjected to my care. This alone would be sufficient to decide me to retire from the public service and return to the Bar.

Nor do I think that in the present state of the Court, or in any state of it which can reasonably be anticipated in my time, my continuance on that bench ought to be deemed of such public importance as to weigh much in favor of my continuing there. You will readily understand that this is a subject on which I cannot go into details, and cannot without indelicacy even offer reasons in support of the opinion I have expressed, but I can say it is an honest opinion founded deliberately upon a careful scrutiny of the subject.

I have held this great trust six years under your appointment. I

can assure myself of nothing concerning it, save that both in holding it and resigning it I have endeavored to do my duty.

With much respect,

I am your obedient servant,

BENJAMIN R. CURTIS.

President Fillmore's reply was as follows: —

Hon. B. R. CURTIS. BUFFALO, Sept. 4, 1857.

MY DEAR SIR, — Your letter of the 1st, informing me that you have determined to resign the office of Justice of the Supreme Court of the United States, has just come to hand, and I have perused it with surprise and regret. I had no suspicion that such a calamity was to befall the country at this time. I have always looked back to your appointment as one of the most fortunate acts of my brief administration, and one to which I and my friends could always point with proud satisfaction. This feeling was greatly increased by your unanswerable arguments in the opinion delivered by you in the Dred Scott case.

I cannot, of course, know what your duty to your family may require, but I am sure I cannot be mistaken in saying that your duty to your country requires that you should not resign. I beg of you not to despair, though there may be much to discourage; yet I am sure your services and abilities are appreciated by the bar and the intelligent portion of the public. I am sure no man has, in so short a time, gained a more enviable judicial reputation; and there is no man to whom the country looks with more hopeful confidence than to yourself; and I greatly fear that your resignation, especially at this time, will not only impair the confidence of all good and intelligent men in the stability of our institutions, but that the appointment of a successor may be *most unfortunate*. I will not be more explicit in my apprehension on this point. You may know who will probably be selected, but I confess I fear the worst.

I trust you will pardon me, therefore, for the earnest solicitude which I feel on this subject, and excuse me if I urge you again and again to reconsider the subject, and, if you cannot make the sacrifice of holding the office permanently, at least consent to submit to it for a time, until a reasonable hope can be entertained that the vacancy will be well filled.

I write in haste, giving my first impressions, and must ask your indulgence for the freedom with which I have spoken.

I am truly yours,

MILLARD FILLMORE.

Letters were received by Mr. Curtis from all his associates on the Supreme Bench, expressing their high sense of the ability, dignity, and uprightness with which he had performed his official duties, and their respect for his personal character, and lamenting the loss of his wise counsels and agreeable society; but at the same time agreeing with him as to the inadequacy of their salary to meet the expenses of the office, and acknowledging that in his case, with a large family to provide for, this fact alone was a strong reason for resuming practice at the bar. Chief Justice Taney writes as follows: —

FAUQUIER SPRINGS, VIRGINIA, Sept. 7, 1857.

DEAR SIR, — Your letter informing me that you have resigned the office of Associate Justice of the Supreme Court did not reach me until the day before yesterday.

My own experience has long since shown me the inadequacy of the salary attached to the office. At your time of life, you may reasonably expect many years of health and strength enough for judicial and professional labors. And I have no doubt you have judged wisely in returning to the bar instead of remaining on the bench, and diminishing yearly the provision you had made for your family before your appointment.

Respectfully, your obedient servant,

R. B. TANEY.

From a file of the letters of his intimate friend, Judge McLean, who had urged him to reconsider his purpose to vacate his office, or at least to postpone its execution for a single year, I select the following: —

CHAPEL-WOOD, Sept. 6, 1857.

MY DEAR JUDGE, — In our papers of yesterday, it was announced that you had resigned your seat on the bench, and the receipt of your very kind letter confirmed the report. Although I had reason to believe from your last letter that you would come to this determination, yet I cherished a hope that you would postpone your resignation at least until after our next term. But I feel bound to say the reasons you give show such a high moral obligation and Christian duty that I cannot say you have erred.

My nature is so selfish that I felt a regret which I cannot describe, both in regard to personal considerations, and also for the irreparable

loss sustained by the bench. When Story left us, the same sensation oppressed me. One change after another has occurred since I have been a member of the Court, until I have lost the interest and pride I once felt in the Tribunal. In 1830, when I first took my seat, the Court commanded the respect and veneration of the country; but it can never hope to regain so elevated a position in the future. While I remain a member of it, I shall endeavor to think of the time past rather than of the present or the time to come.

In our journey through life, the most interesting associations are broken, and we are thrown upon the past to cherish in our memories and hearts whatever sweetened our labors and contributed to our happiness.

I hope, my dear Judge, that your expectations will be more than realized at the bar, and that your days may be prosperous and happy. And rest assured that no change of circumstances or place can lessen the esteem and affectionate regard of

Your friend,

JOHN MCLEAN.

Judge Nelson writes: —

MY DEAR SIR, — Your favor of the 1st instant has taken me altogether by surprise; and personally, as well as publicly, I sincerely regret your determination. I was fully aware of the sacrifice you made pecuniarily in accepting the judgeship, but had hoped that you had made up your mind to submit to it. I do not, however, question the wisdom of your decision: on the contrary, I am free to say, if I was not in this place, with my knowledge and experience of its responsibilities and sacrifices, I should never hold the office. I have the advantage of you, however, as my age is such that, in the ordinary course of life, my period of judicial labor is short. You had a long term in prospect, and from the condition of the members of the bench were unable to tell who would be your associates. A few years must work an extensive change. God grant the successors may be worthy of the place and the Republic. Though we shall be separated as to judicial labors, I trust you may be with us in an equally honorable and useful service, at our stated term, as a counsellor and friend of the Court. And if I should see you advanced as a member of a still higher court in the other end of the Capitol, there is no friend who will witness it with sincerer satisfaction. . . .

Very truly and sincerely yours,

S. NELSON.

From Judge Pitman, of the District Court, he received the following: —

PROVIDENCE, Sept. 20, 1857.

DEAR SIR, — It was with much sorrow that I received yours of the 1st instant, informing me of your resignation of the office of Judge of the Supreme Court of the United States. There is a universal sentiment of regret at this determination of yours among all whom I have heard speak on the subject; but you are the best judge of the duties which you owe to the public, and to yourself and family. My loss as one of the public, I fully appreciate; and also the loss of an associate in this district, whom I so much esteem, and I fear whose place will not be filled to my satisfaction. I deem it a sad misfortune, and one which indicates badly for the future, that an honest judge will not find himself pleasantly situated on the Bench of the Supreme Court of the United States. It seems to be expected that judges are to lend themselves to support the party to which they owe their promotion. And I fear that a court as independent as the Constitution could make it, and which has heretofore been looked upon with so much confidence to protect us from the madness of the times, will now be considered as one of the instruments of a party. I intended to have written you some time since, thanking you for your most able and independent opinion in the Dred Scott case. It will stand to give you eternal honor, when the unfortunate opinion of the majority will have been consigned to the contempt which it merits; if, indeed, we shall ever recover from the downward tendency which so strongly foreshadows our destruction. . . . I hope I may have the pleasure of seeing you again at the bar, if I may not be favored with your presence on the bench; and I wish all the prosperity and happiness in your return to the bar which you so well deserve.

Whoever may be your successor, I have no reason to expect that my situation as Judge will be much longer prolonged, and therefore it may be of little consequence to me personally.

I am very truly your friend and obedient servant,

JOHN PITMAN.

All the letters are interesting, and honorable alike to their writers and to Mr. Curtis; but there is no space for them here.

I have dwelt at considerable length upon this point, because it touches the only part of Mr. Curtis's professional life upon which a shadow has rested. I might have dismissed the sub-

ject with the obvious remark that he had a perfect right to judge for himself as to his duty; that being a man of clear mind, sound judgment, and strictly conscientious, he is entitled to the credit of having judged wisely, and that it is to his honor that, having decided that it was his duty to withdraw from the Supreme Bench, he allowed neither his own inclination nor attachment to official dignity, nor persuasion or remonstrance of friends, nor the certainty of misinterpretation and censure on the part of the public to deter him from carrying his decision into effect. But I prefer to let Mr. Curtis speak for himself, and to adduce the testimony of those who were not only most competent to judge of the validity of his reasons, but had especial cause to regret the loss of his counsels and character to their tribunal. I have also thought that the letters might be read with interest, on account of the character and position of their writers; and that they were not inappropriate to this Memoir, as illustrating the estimate in which Mr. Curtis and his services to the country were held by his distinguished associates.

After resigning his seat upon the Supreme Bench, Mr. Curtis opened an office in Boston, and resumed the practice of the law, to which he devoted himself during the remainder of his life, having a large amount of business, and being often consulted in cases and upon questions of the greatest importance.

In the fall of 1871, Mr. Curtis was appointed by the President of the United States, in connection with Hon. William M. Evarts, of New York, and Hon. Caleb Cushing, of Washington, to be counsel for the United States before the Board of Arbitration to assemble at Geneva, Switzerland, under the Treaty of Washington of 1870. Mr. Curtis would have accepted this appointment, had it not been first announced to him on his arrival at New York from Europe, after an absence of several months; on which account, and from the pressure of duties at home, he was obliged, reluctantly, to decline it. In 1873, he was appointed by the Mayor of Boston one of five commissioners to revise the City Charter.

The excellent tributes which have been paid to his memory

by the members of his profession in all parts of the United States, some of which are preserved in a permanent form, would render any thing more than a most general notice of Mr. Curtis's character and accomplishments as a lawyer and judge unnecessary in this Memoir, even if the writer were able to do justice to such a subject. By almost unanimous consent of those competent to judge, he has been placed at the head of the American bar. To have won this supremacy in one of the highest departments of human service, to which so much ability, genius, learning, eloquence, and moral power are devoted, and which is adorned by such illustrious names, is honor enough for a single life. But it is a brighter and rarer honor that this distinction has been attained without ambitious reaching or a feeling of rivalry on his own part, and has been accorded to him by those who might have been considered his competitors as an undoubted right.

It happened that during the term of Mr. Curtis's service as Judge on the Supreme Bench the long and momentous struggle between the North and the South, on the subject of slavery, was fast approaching its final issue. Never had there been a period since the first establishment of the Court when questions more difficult or of graver interest were presented to its consideration, or when a greater weight of responsibility rested upon its judges, or when their integrity and wisdom were put to a severer test.

One of the first trials which came before him was that o Lewis Hayden, of Boston, charged with participating in th rescue of Shadrach, *alias* Frederick Ninkins, from the Unitec States Marshal and his deputies, — he having been arrestec as a fugitive from slavery.

The "Dred Scott" case, as it is called, which has become so celebrated, and which was unquestionably the most impo tant case ever brought before the Court, is too well known require any thing more than the briefest allusion. It was th of a slave of Missouri, who claimed the right to be free consequence of having been taken by his master into a fr United States Territory, and of having resided there a co siderable length of time. The case was decided early i

1857; the majority of the Court giving judgment adverse to the claims of the slave. From this decision Mr. Curtis dissented, and gave in his opinion a most sound and masterly exposition of law and justice as applicable to the case, and a complete defence of the Constitution against the charge of a purpose to legalize slavery in all parts of the territory of the United States.

In 1868, Mr. Curtis was one of five of the ablest members of the American bar who acted as counsel for Andrew Johnson, President of the United States, in the trial of the articles of impeachment brought against him by the House of Representatives, the Senate of the United States sitting as a court of judgment, with Chief Justice Chase as the presiding officer. I think it may be said, without injustice to his learned and eloquent associates, that after Mr. Curtis had opened the case no point of law pertinent to it was left to be adduced or elucidated by those who followed him. Such was, in substance, the opinion expressed at the time by one of the most distinguished men who acted as a judge at the trial, whose most important vote was determined by Mr. Curtis's argument; and such, I believe, is the judgment of all eminent jurists.

In consenting to act as the President's counsel, Mr. Curtis was influenced wholly by patriotic motives. He had no interest in Mr. Johnson personally, and no acquaintance with him. He felt that great peril threatened the country, — that in the intense excitement of party feeling the Senate might be hurried on to an act not only of injustice to an individual, but unconstitutional, and perilous to the country. He had no question as to his duty in this crisis. All private objections must be sacrificed, all less important professional engagements deferred, at the call of justice and patriotism, and his best strength put forth to avert the impending danger. Those to whom he communicated his feeling at the time, all, indeed, who knew him, need no proof that he was actuated by these high and generous motives. But for the sake of others I may mention the fact that his services at the trial were wholly gratuitous, — that for all the labor and expense

bestowed upon the case he neither asked nor received any remuneration. He made the country and justice his debtors, but felt that the debt was more than cancelled when the former came out of the trial without injury, and the latter with inviolate honor.

Mr. Curtis's style was a model of clearness, conciseness, and accuracy. Vigorous, but not impassioned; massive without ruggedness; devoid of ornament, but distinguished for purity of taste, and that perfect propriety which nothing but familiarity with the classics can impart, — his choice and suggestive words had the force of illustrations, and rendered figures unnecessary. He never overlaid an argument with superfluous words, or stretched it beyond its strength, or weakened it by exaggeration, or made it subservient to the parade of his own learning and ingenuity; but, having clearly and forcibly presented it, was content to leave it to stand on its own merits. Though a lover of poetry, and often in conversation referring to and sometimes repeating a favorite verse or line from the best authors ancient and modern, he never quoted it in public speech, and very rarely in any published writings. He kept his object in full view, advancing towards its accomplishment with single aim, a steady step, and by the most direct road. The fairness, calmness, and sober earnestness with which he presented his case, gave weight to his arguments and helped to produce conviction. He never condescended to any small devices; never appealed to the passions or prejudices of the jury; never lost his temper; and never indulged in personalities.

I remember that, a great many years ago, the late Governor Kent, of Maine, told me that, having heard that Mr. Webster was about to argue a case at Portland, he went from Bangor to hear him. One of the opposing counsel was Mr. Curtis, then a young man, whose fame had hardly reached beyond his native State. After Mr. Webster had finished his plea, of course powerful and eloquent, Mr. Curtis, in rising to reply, made no allusion to his mighty antagonist any more than if he had been of no reputation, but with perfect composure entered at once upon the merits of

the case, and argued it in a masterly manner. "I was greatly impressed," said Mr. Kent, "by this remarkable instance of manly self-respect and honest reliance on the justice of his cause in so young a man, and at that moment recognized in him the genuine marks of greatness."

I cannot more fitly close this brief sketch of Mr. Curtis's professional qualities than by applying to him the fine lines of Sir John Denham descriptive of the river Thames, which Mr. Curtis himself repeated only a few days before his death, remarking that they well expressed his idea of a good lawyer, and that he should be perfectly satisfied if they should be judged applicable to himself, — the same lines which, by a singular coincidence, one who had known him long and well and was competent to estimate him aright, altogether ignorant of his friend's remark, as if inspired to pass that very judgment which he would have most valued, so soon afterwards used to describe his legal character in a discriminating eulogy in the place where more than in any other a lawyer might most desire to be praised, and before the assembly most capable of appreciating his merits: —

> "Though deep, yet clear; though gentle, yet not dull;
> Strong without rage; without o'erflowing, full." *

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* In Mr. Harvey's "Reminiscences and Anecdotes of Daniel Webster," recently published, which I had not read when the sentence to which this note is attached was written, occurs the following paragraph: —

"In a letter to Mr. Blatchford in 1849, he writes from the court-room: 'Mr. B. R. Curtis is now speaking in reply to Mr. Choate, on the legal question. He is very clever, with competent learning. His great mental characteristic is clearness; and the power of clear statement is the great power at the bar. Chief Justice Marshall possessed it in a remarkable degree; so does Lord Lyndhurst. If to this character of clearness you add fulness and force, you make a man, whether as a lawyer, an historian, or indeed a poet, whose discourse or writing merits the application of those lines of unsurpassed beauty in Denham's "Cooper's Hill,"

> "Though deep, yet clear; though gentle, yet not dull;
> Strong without rage; without o'erflowing, full."'"

It is a singular fact, as well as another evidence of the applicability of this description to Mr. Curtis, that it should have been suggested to Mr. Webster while listening to his argument.

In his politics Mr. Curtis was a decided conservative, but not a partisan. In early manhood, he was connected with the old Whig party, and always held consistently to its principles, and after it was broken up, without regard for names, gave his vote to the party whose measures seemed to him likely to be most conducive to the welfare of the country.

In his pamphlet on Executive Power, Mr. Curtis speaks thus of himself: "I am a member of no political party. Duties inconsistent, in my opinion, with the preservation of any attachment to a political party, caused me to withdraw from all such connections many years ago, and they have never been resumed. I have no occasion to listen to the exhortations, now so frequent, to divest myself of party ties, and disregard party objects, and act for my country. I have nothing but my country for which to act, in any public affair."

In the character of Mr. Curtis there was a rare combination of firmness and force of purpose with great tenderness of feeling and quick sympathies. His eyes would moisten and his voice become soft and tremulous when speaking of a friend's sorrow, or of an instance of peculiar heroism. He was never heard to speak evil of any one, and, if he could not palliate the faults of a neighbor, would not denounce them. His generosity was large and free, as it was modest and unostentatious. Many instances of it have come to light from time to time, especially since his death, but only because the gratitude of those who experienced it could not be suppressed. "I have known him," said the District Attorney, in remarking upon this trait of his character, "in cases where he had thought the judgment had fallen too hard upon his client, to turn and relinquish every dollar of his fee, in order to soften the adverse blow, and that, too, without a word, without any open demonstration, and probably without anybody knowing it except myself, his bookkeeper, and client." Instances of a similar nature have been brought to my knowledge which could not have come under the notice of the learned attorney. Among them is the following. Mr. Curtis was counsel in a case before the Supreme Tribunal

in Washington, involving a very large amount of property. The decision was against his client, as Mr. Curtis thought, unjustly, on a mere technical ground. On leaving the court-room, Mr. Curtis in a private interview grasped the hand of his client, burst into tears, and utterly refused any fee for his laborious service in the case.

These instances are not recorded under the impression that they are altogether uncommon among lawyers of the better class, but because they are characteristic of Mr. Curtis, do honor to human nature, and are incentives to generous deeds.

For one whose aims were so high, and who was so earnest and persevering in his endeavors to accomplish them, Mr. Curtis was singularly free from ambition. A letter is in existence, written by him when a law student at Cambridge, addressed to a friend at Greenfield, asking him to inquire into the particulars of a vacancy to be made in the practice in the village of Northfield by the retirement of a practitioner there. "I am told," said he, "that the practice there may be made to yield seven or eight hundred dollars a year. If you are satisfied that it is a suitable place for a young man not specially ambitious, but who desires a chance for legitimate work, I shall be inclined to go there." Such was his modest estimate of his own abilities, even when passing from youth to manhood, — that period of hope and ardor, — and at a time, too, when his instructors and fellow-students were prophesying for him a brilliant career.

Mr. Curtis was a warm and thoughtful admirer of nature in all its forms and moods. He loved the country and the seaside; and his eye always brightened and his spirits became buoyant when, having left behind him his professional cares and the close air of the court-room, he came in sight of the ocean, or caught a glimpse of the Berkshire hills. He took keen delight in starting off with his dog and gun for a day's sport in the woods, or with rod and line to angle in the clear brooks or about the margin of some sheltered pond. But his enjoyment of these sports was only occasionally allowed for

purposes of health and necessary relaxation, never indulged in to the neglect of his regular occupations.

A learned counsellor, in his tribute to Mr. Curtis, after speaking in high terms of his professional attainments and judicial character, qualified his encomium by remarking "that he had his limitations; that he did not know that he should be prepared to say or think that, aside from what he was as a lawyer, he was also a great man; that he had produced upon the country or the world no leading or great impression."

I cannot admit the justice of this distinction between the lawyer and the man, to the disparagement of the latter. It is certain that those who knew him regard the qualities of the man as no less admirable than those of the lawyer. They know that the personal and professional character were in perfect harmony and of equal greatness. Wise, truthful, magnanimous without pretence or affectation, above all sordid motives, courting no man's favor and fearing no man's frown, and withal naturally courteous and dignified, he never put on or put off any thing when he appeared as the great lawyer at the bar or on the bench. Whether privately counselling his client or pleading in open court, or hearing a cause or charging a jury, the man was always true to himself; his essential character adding value to his advice, giving weight to his arguments, authority to his judicial opinions, and impressiveness to all his official acts. It does not admit of denial that Mr. Curtis's character bore that genuine stamp of greatness which cannot be counterfeited nor disputed, the test of which is the spontaneous recognition and homage of men. Everywhere and at all times, on the bench, at the bar, in every assembly, whether large or small, in the most select company and in general society, his presence was impressive and commanding. No man, however great, could look down upon him. Very few could feel themselves to be his peers. Most men, even those of a high order of mind and character, instinctively acknowledged his superiority.

It is true that "he had his limitations," and equally true that he had his imperfections. Not to admit this would be to

deny that he was human. But to whom would not the same criticism apply? and what man could be accounted great, however deserving of the distinction, if this must be accepted as a just bar to the title? But, whatever may have been Mr. Curtis's limitations or imperfections, he had none that were inconsistent with greatness. Limitation, indeed, so far from being incompatible with human greatness, is one of the conditions of it, and when self-imposed is an evidence of superior wisdom. There have been men of high natural endowments who have accomplished no valuable results, and failed of becoming great simply by disregarding this condition. Because a man by the concentration of his abilities becomes pre-eminent in one honorable calling, it does not follow that he has not the capacity to arrive at equal excellence in any other. It detracts nothing from Mr. Curtis's high fame to say that, although a great lawyer, he was not a statesman. He had qualities which, had he felt it his duty to enter political life, would have made such a statesman as would have added dignity to the office and done honor to his country. Neither would his character as a judge lose any thing of its greatness, even if it were true that "he has made no contributions to judicial science of the importance of those made by his predecessor, Judge Story," inasmuch as it was not within the scope of his purpose to undertake that special work, and perhaps because he felt it less necessary to do so for the reason that it had been already so thoroughly done. But, if he had felt called upon to devote himself to the task, there can be no doubt that with his comprehensive knowledge, his extensive practice in the higher departments of jurisprudence, his power to grasp the abstract principles of the law, and his skill to unfold and apply them, combined with his clearness of statement and closeness of reasoning, he might have performed it in such a manner as to secure for his writings a reputation not inferior to that which justly attaches to those of his eminent predecessor.

Mr. Curtis in his youth, exercising that maturity of judgment for which he was even then distinguished, selected one

of the liberal professions particularly suited to his tastes and abilities, and immediately began to prepare for it, not only by a special course of study, but by the diligent acquisition of classical, scientific, and general knowledge, both to enlarge and enrich his mind and to furnish abundant material for future use.

This was one of his limitations, that having, as he believed, under the guidance of the finger of Providence, marked out for himself a life-path of useful and honorable service, he afterwards pursued it with conscientious fidelity, unwavering zeal, and undeviating desire, turning neither to the right hand nor to the left, intent only on the thorough and perfect performance of every duty to which it might lead. This was one of Mr. Curtis's limitations; and the result was, as has been generally acknowledged, supremacy in his profession.

When the learned jurist said "that he did not think he had produced upon the country or the world any leading or great impression," could he have forgotten the dissenting opinion in the Dred Scott case, — that noble vindication of the Constitution, by which for the first time a path was cleared for the blessed union of liberty and law? Or could the opening argument in the trial of the Impeachment of President Johnson have slipped from his memory, — that clear, calm, and exhaustive exposition of the principles of law bearing upon the case, which had such a powerful and propitious influence upon the action of the highest national tribunal in a moment of extreme perplexity and peril? But, happily, the opinion of an individual, however worthy of respect, has little weight against the almost unanimous verdict of wise and good men. And in the present instance such a verdict has been rendered. So far as the past and the present are concerned, Mr. Curtis, by these great arguments, has already produced a deep impression upon the country, and upon the minds of his contemporaries. And for the permanence of this impression, and for the judgment of the future, we have no fear. The name of him who is so intimately associated with

these celebrated trials, and who, in connection with them, has done such good service to his Country and to Justice, will be honorably remembered, not only so long as the American Republic may last, but as the most important crises in its career shall have a record on the page of history.

"In both these cases" (I quote from a graceful tribute to the memory of Mr. Curtis, at a meeting of the Class of 1829, by a distinguished friend and classmate, who has since followed him, we trust, to a renewal of their fellowship in a higher world), "rendering such service to his country as was rendered by Lord Somers, in the trial of the Bishops, or by James Otis, in the argument of the legality of the writs of assistance; in the first expressing the prepossessions of the Northern States, in the other encountering them, but in both judicial, passionless, and true to his intellectual convictions." *

Any sketch of Mr. Curtis would be imperfect which should fail to notice and give prominence to his religious character. The simple faith of his childhood, never parted with in youth, was retained in full strength and freshness to the end of life. Though it may not be generally understood, since Mr. Curtis shunned rather than courted public notice, this was his crowning quality, the last with which he would have parted, the strength and beauty of his character, and the secret of his success. He had a firm and consistent belief in the divinity of Christ, and therefore in the Fatherhood of God, — in Providence and in prayer. He was ready on all proper occasions to express his belief in divine Revelation, and to defend it against the objections of the sceptical. In commenting upon the proposed prayer test, he said that every thoughtful man might find a test in his own experience, and that it was enough for him that the Saviour was himself accustomed to pray, and assured us that prayer had its answer. He once remarked that communion between man and his Maker seemed to him as reasonable and real as that between one human being and another. In conversing with

* Hon. George T. Davis.

him on these subjects, I have been struck with the deep feeling and positiveness of conviction with which he spoke. I have heard him say that theology was one of his favorite studies outside of his profession, and that he had weighed and examined the evidences of Christianity with a lawyer's scrutiny, and found them to be sufficient and irrefutable. But his own belief did not rest upon them as much as upon the necessities of his own heart, the study of his own nature, the lessons of experience, and the impression made upon his mind by the Holy Scriptures, especially the New Testament. Many reminiscences of acts and sayings illustrative of this part of his character — the highest and best part of any character, and that which always asserts its supremacy in our regard, when the life of a friend is ended — are cherished among his confidential associates. They are attached to every period of his life. Some of them are reserved for the communion of private friendship; but to others the utmost delicacy of feeling would not deny the permanent record of which they are not unworthy. The following was related by a classmate at the annual dinner of the Class of '29, after Mr. Curtis's death.* "Among several incidents of a journey on horseback with Curtis to Niagara Falls, during one of our college vacations, I recall an interesting one illustrative of his religious character. One Sunday night, when we had lain by as our practice was, he asked me if I would hear him read a short prayer; and taking out a pocket prayer-book he read, in that singularly charming voice, which remained the same through life, some appropriate prayer. We had very punctiliously avoided saddle-bags, carrying instead the small, round military valise, which held little more than a single change of clothes; but he had remembered, and contrived to find room in his, for the little volume."

On one occasion while he was practising law at Northfield, Sheriff ——, observing the Bible open before him, playfully remarked that that was a strange book for a lawyer to be seen

* George W. Phillips, Esq.

reading in his office. Mr. Curtis replied, "Then I pity the lawyers; for those who are ignorant of the principles inculcated in that book cannot be thoroughly furnished for the duties of their profession."

In a letter to a clerical friend, who had congratulated him on his appointment to the Supreme Bench of the United States, he expresses with profound humility his sense of obligation to the Divine Power for any success which he had achieved, without invoking which he had never taken any important step, and would not presume to undertake the responsible office to which he had been appointed.

Some time after he had retired to private life, he remarked confidentially to an intimate friend that he had never taken his seat on the bench, or risen to charge a jury, until he had first offered a silent prayer for wisdom and guidance.

In 1871, Mr. Curtis's health, which for two or three years had been less vigorous than before, began perceptibly to fail; nevertheless, he continued to work hard, and engaged in many weighty and difficult cases. Early in the summer of 1874, he went to Newport, R. I., to seek the rest and refreshment which he so much needed; but it was too late for relaxation from labor and the reviving air to recruit his exhausted strength. He gradually became more ill, until in July he was seized with a complicated disorder, which after two months terminated in congestion of the brain, and caused his death, which took place on the 15th of September, 1874. His sickness was borne with patience and equanimity; and, quietly confiding in the promises and mediation of the Redeemer, he departed in peace.

Mr. Curtis was thrice married. In 1833, May 8, to Eliza M. Woodward, of Hanover, N. H., his cousin, who died in 1844. In 1846, Jan. 5, to Anna Wroe, daughter of Charles P. Curtis, Esq., who died April, 1860. In 1861, Aug. 29, to Maria M., daughter of Jonathan Allen, Esq., of Pittsfield, Mass., who survives him.

Mr. Curtis's publications were as follows: —

"An Address to the Citizens of Deerfield," delivered by request in 1832, on Washington's birthday.

"An Address to the People of Massachusetts," on the Coalition of 1851, by which Mr. Sumner was elected to the United States Senate.

Twenty-two volumes of "Decisions of the Supreme Court of the United States," with notes and a digest, published while he was on the Bench.

"A Digest of the Decisions of the Supreme Court of the United States, from the origin of the Court to the close of the December Term, 1854."

"Reports of Cases in the Circuit Court of the United States." Boston, 1854. Two volumes. 1857.

Pamphlet on "Executive Power," in 1862.